

STAIGERWALD, 9509 SAN LUCAS, AUSTIN, TX 78737.

1.3 Third-Party Defendant LEHIGH is a Texas corporation with its principal place of business in Hays County, Texas and may be served with process by certified mail, sheriff, constable or private process server upon its Registered Agent for the service of process: CT CORPORATION SERVICE CO., 1999 BRYAN ST. STE 900, DALLAS, TX 75201.

1.4 Third-Party Defendant TMG is a Texas corporation with its principal place of business in Travis County, Texas and may be served with process by certified mail, sheriff, constable or private process server upon its Registered Agent for the service of process: CORPORATION SERVICE CO., 211 E. 7TH STREET, STE. 620, AUSTIN, TX 78701-4234.

1.5 Third-Party Defendant TRAVIS is a Texas corporation with its principal place of business in Travis County, Texas and may be served with process by certified mail, sheriff, constable or private process server upon its Registered Agent for the service of process: MICHAEL J. WEYNAND, 2201 N. LAMAR, STE. 110, AUSTIN, TX, 78705.

II. BASIS

2.1 EASY MIX brings this Third-Party Complaint pursuant to Rule 14, Federal Rules of Civil Procedure, for the reason that Third-Party Defendants are or may be liable to EASY MIX for all or part of the claim brought against EASY MIX by Plaintiff.

III. JURISDICTION

3.1 This court has jurisdiction over this cause under 28 U.S.C. §1332(a) because the original matter in controversy exceeds the sum of \$75,000 exclusive of interest and costs and is between citizens of different states. The Western District of Texas, Austin Division, has proper jurisdiction because the events made the basis of this suit occurred within the Austin Division.

IV. FACTS

4.1 Plaintiff has filed this subrogation action claiming that EASY MIX is responsible for cracks, leaks and other defects in and around the subject swimming pool. In particular, Plaintiff alleges that the concrete provided by EASY MIX suffered from a chemical reaction, known as ASR, that causes swelling. EASY MIX purchased all components of the concrete, namely sand, aggregate and cement, from TRAVIS, TMG and LEHIGH and merely mixed the components with water. Any ASR contained in the concrete originated with the suppliers. The materials used by EASY MIX to form the shell of Plaintiff's swimming pool were purchased from Third-Party Defendants TRAVIS, TMG and LEHIGH. The designer, general contractor and builder of the swimming pool in question was Third-Party Defendant STAG POOLS.

V. CONTRIBUTION

5.1 EASY MIX incorporates by reference all prior paragraphs. EASY MIX strictly denies the claims and allegations of Plaintiff, but in the unlikely event that EASY MIX is found liable to Plaintiff, it seeks contribution from Third-Party Defendants pursuant to the provisions of Chapter 32 and 33 of the Texas Civil Practice & Remedies Code.

VI. PRODUCT LIABILITY DEFENSE AND INDEMNIFICATION

6.1 EASY MIX incorporates by reference all prior paragraphs. As manufacturers and/or up-stream suppliers of the concrete components purchased by EASY MIX, Third-Party Defendants LEHIGH, TMG and TRAVIS are obligated to defend and indemnify EASY MIX against claims such as those made the basis of Plaintiff's Original Complaint. EASY MIX has denied and continues to deny the claims and allegations of Plaintiff but, in the unlikely event EASY MIX is found liable to Plaintiff, EASY MIX seeks indemnification for any and all damages and attorneys' fees and costs associated with Plaintiff's claim.

VII. NEGLIGENCE

7.1 EASY MIX incorporates by reference all prior paragraphs. Third-Party Defendants LEHIGH, TMG and TRAVIS negligently failed to provide materials free of deleterious materials/components. In addition, or alternately, Third-Party Defendant STAG POOLS negligently failed to properly engineer, design, install and oversee the construction of the subject swimming pool resulting in Plaintiff's damages. EASY MIX has denied and continues to deny the claims and allegations of Plaintiff, but in the unlikely event EASY MIX is found liable to Plaintiff, EASY MIX seeks contribution for the negligence of Third-Party Defendants.

VIII. ATTORNEYS' FEES

8.1 Pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code, EASY MIX seeks to recover all attorneys' fees and costs incurred through trial and any appeals in defending against Plaintiff's claims against each Third-Party Defendant.

8.2 EASY MIX seeks to recover all pre-judgment and post-judgment interest at the highest rate permitted by law.

IX. CONDITIONS PRECEDENT

9.1 All conditions precedent to EASY MIX' claims for relief have been performed, excused, or have occurred.

PRAYER

WHEREFORE, PREMISES CONSIDERED, EASY MIX respectfully prays that Plaintiff take nothing by way of this cause or, in the alternative, award damages against Third-Party Defendants as follows:

- a. EASY MIX's damages as set forth above;
- b. All reasonable and necessary attorneys' fees and expenses incurred in this lawsuit;
- c. All costs of court in the trial and appellate courts;

- d. Pre-judgment and post-judgment interest at the highest rate allowed by law; and
- e. Such other and further relief to which EASY MIX may be entitled.

Respectfully submitted,

LAW OFFICE OF STEWART K. SMITH

/s/ Scott G. Ball

By: _____

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**ATTORNEYS FOR DEFENDANT
EASY MIX CONCRETE SERVICES LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was forwarded to **all** counsel of record on this 21st day of October 2022, in accordance with the Texas Rule of Civil Procedure.

/s/ Scott G. Ball

Scott G. Ball